IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9868 of 2005

Between:

P. Vijay Vardhan Reddy S/o P. Swamy Reddy, R/o H. No. 50/750/9, Gayathri

Estate, Kurnool, Kurnool District

... PETITIONER

AND

1 Kurnool Municipal Corporation, Kurnool, Kurnool District rep

by Commissioner
2 The Assistant City Planner, Kurnool Municipal Corporation Kurnool, Kurnool

District
3 The Director of Town and Country Planning Andhra Pradesh, A.C. Guards,

Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction declaring the Endorsement Roc. No. 2534/2002/G1 dated 8-4-2005 issued by the Assistant City Planner, Kurnool Municipal Corporation, Kurnool, Kurnool District 2nd respondent herein, directing to obtain No Objection Certificate" from the district Collector, Kurnool for the purpose of releasing the construction permission as illegal, arbitrary, unreasonable, null and void, without jurisdiction and violative of Articles 14 and 300-A of the Constitution of India and opposed to the very spirit and object of the provisions of the Hyderabad Municipal Corporation act, 1955 and contrary to the law laid down by this Hon'ble Court in the Judgment Reported in 2001(3) ALD 600 and consequently direct the Respondents 1 and 2 to release the permission for construction in favour of the Petitioner in the land in S.Nos. 746/B1 and 746/1A3, Gayathri Estate, Kurnool Kurnool District without insisting on Objection certificate from the District Collector, Kurnool.

Counsel for the Petitioner: MR.A.V.SESHA SAI

Counsel for the Respondents: GP FOR MUNCIPAL ADMN. & URBAN DEV.

The Court at the admission stage made the following:

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the alleged action of the second respondent directing the petitioner to obtain "No Objection Certificate" from the District Collector, kurnool for the purpose of releasing the construction permission as arbitrary and illegal.

Learned counsel for the petitioner states that the issue involved in this writ petition is squarely covered by the decision of this Court in ***HYDERABAD POTTERIES PRIVATE LIMITED v. DISTRICT COLLECTOR, HYDERABAD***[1] wherein it has been held as under.

> "The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objection(s) whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any dispute questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purpose of granting permission and nothing more."

The learned counsel also states that the Writ Appeal No.1096 of 2001 filed against the said decision was disposed of by the Division Bench observing that the Commissioner while acting under Section 429 (1) (a) of the Hyderabad Municipal Corporation Act, read with relevant building bylaws acts as a statutory authority and required to make decision on relevant material and facts and it is not legally permissible for such authority to base its decisions only on one piece of relevant material and to exclude other relevant material.

The learned Counsel for the petitioner has relied upon a decision of the Division Bench of this Court in G.JAYAMALA AND OTHERS v. THE COMMISSIONER, MUNICIPAL CORPORATION OF HYDERABAD wherein it was held that insistence of the Municipal Corporation to produce a No Objection Certificate from the Collector, Hyderabad with regard to the title as a condition precedent for processing the application for sanction of the layout is arbitrary and illegal.

The learned standing counsel appearing for the respondent-Corporation does not dispute the above legal position.

Accordingly, the impugned order dated 8-4-2005 is set aside and the Writ Petition is disposed of with a direction to the respondents to reconsider the application of the petitioner in the light of the above decisions and pass appropriate orders in accordance with law without insisting on production of No Objection Certificate from the District Collector.

The writ petition is accordingly disposed of. No order as to costs.

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G. ROHINI, J

Dated: 27-04-2005

LSK

ASSISTANT REGISTRAR

To

1 The Commissioner, Kurnool Municipal Corporation, Kurnool, Kurnool District.

2 The Assistant City Planner, Kurnool Municipal Corporation Kurnool, Kurnool District

3 The Director of Town and Country Planning Andhra Pradesh, A.C. Guards,

Hyderabad.

5 Two C.D. copies.